

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

March 6, 2003

ORDER

Appeal of Consumer Assistance Division
Decision #11372 Regarding World
Communications Satellite Systems

Docket No. 2002-666

Appeal of Consumer Assistance Division
Decision #2002-12178 Regarding World
Communications Satellite Systems

Docket No. 2002-667

Appeal of Consumer Assistance Division
Decision #2002-12909 Regarding World
Communications Satellite Systems

Docket No. 2002-668

Appeal of Consumer Assistance Division
Decision #2002-12839 Regarding World
Communications Satellite Systems

Docket No. 2002-691

Appeal of Consumer Assistance Division
Decision #2002-11769 Regarding World
Communications Satellite Systems

Docket No. 2002-692

Appeal of Consumer Assistance Division
Decision #2002-12083 Regarding World
Communications Satellite Systems

Docket No. 2003-43

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we uphold the decisions of our Consumer Assistance Division (CAD) in the above-captioned matters.

II. BACKGROUND

World Communications Satellite Systems Inc. (WCSS) appeals six recent decisions of CAD. All six cases involve basically the same fact pattern. In each, a residential customer had complained to CAD that his/her interstate and intrastate long distance carrier had been switched to WCSS without the customer's consent. In each of the cases a third-party verifier working for WCSS spoke to an individual who answered affirmatively when asked whether they were "authorized" to make the decision to switch.

CAD found in each instance that because the person answering the question was not authorized to make such a change, WCSS had violated the Commission rules, Chapter 296 §§ 3(A) and 1(B)(2). When contacted by CAD, WCSS returned the customers to their original carriers. CAD also directed WCSS to credit the customer's account for all unpaid charges, refund any expenses paid for unauthorized service and refund the costs billed by local exchange carriers for service.

WCSS appealed each of the CAD decisions to the Commission. WCSS claims that the individuals' express representations to the verifier that they were authorized to make the switch is sufficient to comply with the rules and that "Staff is unilaterally redefining the requirements for verification and this is being done without following the proper notice and hearing." It further claims:

In essence, the CAD is imposing a requirement on the verifier to cross-examine the person on the telephone about his identity and authority to make a switch and by charging the verifier with constructive notice of the local carrier's records identifying the "authorized person" or "customer." This is *ultra vires*, arbitrary and capricious and fosters breach of Section 222 of the Communications Act.

III. DISCUSSION AND DECISION

We disagree with WSCC's interpretation of both Federal and State law as described below.

A. Maine's Statute and Regulations

Maine statutes provide that a local or intrastate carrier may not initiate the change of a customer's local or intrastate service unless the change is verified by one of the following methods:

- (1) Written authorization from the customer;
- (2) Toll-free electronic authorization placed from the telephone number that is the subject of the change order; or
- (3) Oral authorization obtained by an independent third party.

35-A M.R.S.A. § 7106(1)(A). The Legislature authorized the Commission to adopt rules to implement these provisions. These rules must be consistent with the Federal Communications Commission's rules governing the initiation of a change of a customer's interstate carrier (with certain exceptions not pertinent here). 35-A M.R.S.A. § 7106(3). The Commission adopted such rules in September 1999. Chapter 296 §

3(A) prohibits a carrier from submitting a change in a customer's preferred telecommunications carrier without authorization from the customer, pursuant to section 3(B). Section 3(B) requires a carrier submitting a change to obtain verification with a letter of agency, electronic authorization or third-party verification. Section 1(B)(2) defines "customer" as "any person who has agreed to receive, been accepted and is receiving telecommunication service or has agreed to be billed for the same, including that person's spouse or legal guardian. For businesses, 'customer' also includes a person designated as the contact person for the telecommunications services or an officer or owner of the business."

B. Federal Requirements

The FCC's rules pertaining to changes in interstate service appear in 47 C.F.R. §§ 64.1100 – 64.1195. Under the rules, states may elect to administer these rules. The Maine PUC made such an election in September 2000. Therefore, we apply the FCC rules to interstate changes and our own Chapter 296 to intrastate changes. As noted above, by Maine law, Maine's rules are "consistent with" the FCC's rules.

The Federal rules refer to subscribers where Maine rules refer to customers. The Federal rules define subscriber as any one of the following: (1) the party identified in account records as responsible for paying the bill; (2) any adult authorized by such party to change services; or (3) any person contractually or otherwise lawfully authorized to represent such party. 47 C.F.R. § 64.1100(g). Under the Federal rules, no telecommunications carrier shall submit a preferred carrier change unless it: (1) obtains written authorization from the subscriber; (2) obtains the subscriber's electronic authorization; (3) obtains a qualified independent third-party verification; or (4) meets any state-enacted verification procedure applicable to intrastate preferred carrier change orders only. The Federal rules require that the third party verifier elicit: the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; and additional information concerning the service to be changed. 47 C.F.R. § 64.1120 (c).

C. Application of State and Federal Requirements

At issue in these cases is the situation in which a person answers affirmatively that he is "authorized" and subsequently the subscriber/customer claims he never authorized the person to make any such changes. CAD has taken the position that a carrier bears the risk of a person claiming he is authorized to make a change, and it later being revealed that he was not authorized. Carriers can avoid such situations by only accepting authorization in writing or from the named subscriber. Carriers choosing to rely on the verbal statement from someone other than the named subscriber on the account, run the risk of accepting a change from an unauthorized person. This "strict

liability” interpretation is consistent with the FCC’s Order when it adopted these provisions.

The definition we adopt ...allows customers of record to authorize additional persons to make telecommunications decisions. ... [the rule] clearly identifies the customer of record as the source of authority over who is authorized to make telecommunications decisions. In addition, the definition we adopt distinguishes between two different types of authority: (1) authority based on the express or implied authorization of the customer of record, as reflected in carrier account records or elsewhere; and (2) authority based on federal and/or state law and regulations concerning agency and authority. We emphasize that, by adopting a definition, we are not imposing additional responsibilities on carriers in the submission or execution of carrier changes. Rather, carriers’ responsibilities are determined by the framework of the current rules. Under these rules, submitting carriers are subject to liability for the submission of unauthorized changes, regardless of intent. As we held in the Section 258 Order, strict liability “provides appropriate incentives for carriers to obtain authorization properly and to implement their verification procedures in a trustworthy manner.”

Implementation of Subscriber Carrier Select Changes Provisions of the Telecommunications Act, Third Report and Order and Second Order on Reconsideration, FCC 00-255 (rel Aug. 15, 2000) at ¶ 49 (emphasis added).

The FCC recently applied this strict liability standard in a case involving third-party verification. AT&T Communications Inc. (AT&T) admitted that its verification agent obtained confirmation of a change from an individual not authorized to make the change. However, AT&T argued that “actual” authority was irrelevant to a determination of whether AT&T illegally switched the customers in that it had followed the verification procedures in the rules. The FCC disagreed because “a carrier cannot comply with the Commission’s verification procedures if it receives confirmation from an individual not authorized to make the change.” It found AT&T liable for the unauthorized changes made to the customer’s account. See *In the Matter of AT&T Communications Inc., Order of Forfeiture* (Rel. April 17, 2001), 16 FCC Rcd. 8978.

For enforcement purposes, if a carrier changes interstate service, or intrastate service for a business customer, based only on an oral representation by an individual stating or agreeing that she is authorized to make the change by the customer of record or subscriber, and the customer or subscriber subsequently contacts CAD and states she never authorized such person, the CAD will treat the change as

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.